

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

DOCTOR'S ASSOCIATES, INC.,	:
Plaintiff,	:
	:
-vs-	: Civ. No. 3:00cv544 (PCD)
	:
KWAN CHIEN HU,	:
Defendant.	:
	:
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DOCTOR'S ASSOCIATES, INC.,	:
Plaintiff,	:
	:
-vs-	: Civ. No. 3:00cv545 (PCD)
	:
SHAMSHER KHAIRA,	:
Defendant.	:
	:
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DOCTOR'S ASSOCIATES, INC.,	:
Plaintiff,	:
	:
-vs-	: Civ. No. 3:00cv546 (PCD)
	:
KULBIR AHUWALLA,	:
Defendant.	:

RULING ON MOTIONS TO RECOVER ATTORNEYS' FEES

Plaintiff moves to recover attorneys' fees and costs as a sanction pursuant to this Court's April 27, 2001 orders holding defendants in contempt of orders enjoining them from pursuing a state court actions against plaintiff in violation of arbitration agreements. For the reasons set forth herein, the motions are granted in part.

I. BACKGROUND

On December 6, 2000, this Court issued an injunction barring defendants from prosecuting their individual claims then pending in the Superior Court of the State of California, County of Los

Angeles and “any other claims arising out of or relating to [their] franchise agreement[s]” with plaintiff. Defendants were notified of the order, but on February 5, 2001, through their attorney, Lawrence Strauss, moved in Superior Court for permission to file and prosecute an amended complaint that removed plaintiff as a party in that case but sought to assert the same claims against plaintiff’s agents. On April 27, 2001, this Court found that “[t]he filing and attempted prosecution of [defendant’s] motions violate the December 6, 2000 injunction.”

As a consequence of this finding, defendants and Mr. Strauss were found in contempt. The imposition of monetary sanctions was found to be appropriate, and the amount of such sanctions were to be “based on the amount of attorneys’ fees and costs reasonably incurred by [plaintiff] (both in this action, and in the California state court lawsuit) to avoid . . . attempts to revive the enjoined California action.” Defendants and Mr. Strauss were further held to be “jointly and severally liable” for payment of any monetary sanction imposed pursuant to this order.” The award of monetary sanctions was deferred “pending [this Court’s] receipt of an affidavit from [plaintiff’s] counsel supporting its request for attorneys’ fees and costs.” Plaintiff has since provided documentation in support of its request for attorneys’ fees. Defendants have filed memorandums in opposition to plaintiff’s motions.¹

II. DISCUSSION

¹ The memorandums in opposition are virtually identical, filed by the individual *pro se* defendants. Defendants argue that Mr. Strauss is solely to blame and thus sanctions against them are improper. Defendants’ argument attempts to contest the validity of the finding of contempt rendered on April 27, 2001 will not be entertained as it constitutes an untimely motion for reconsideration of the order and is not properly before this Court. See D. CONN. L. R. 9(e)(motion for reconsideration must be filed within ten days of order). The present ruling is limited to a quantification of the amount of attorneys’ fees and costs reasonably incurred as a result of defendant’s contemptuous conduct. As defendants fail to address the reasonableness of plaintiff’s submission, they have effectively failed to oppose the motion thus providing sufficient cause to grant the motions should the pleadings themselves so justify. See D. CONN. L. R. 9(a)

Plaintiff argues that it is entitled to an award of attorneys' fees and costs of \$19,836.88 and provides time records in support of its motion. Defendants do not contest the reasonableness of the plaintiff's detailing time expended related to the violations of this Court's orders.

A party in civil contempt may be ordered to compensate an aggrieved party for harm caused by noncompliance with a court order. *See Weitzman v. Stein*, 98 F.3d 717, 719 (2d Cir. 1996). Compensation may include reasonable attorneys' fees and costs. *See id.* A party seeking attorneys' fees must provide records of "the date, the hours expended, and the nature of the work done." *New York State Ass'n for Retarded Children, Inc. v. Carey*, 711 F.2d 1136, 1148 (2d Cir.1983). An award is determined by multiplying the amount of hours reasonably expended on the litigation by a reasonable hourly rate. *See Hensley v. Eckerhart*, 461 U.S. 424, 433, 103 S. Ct. 1933, 1939, 76 L. Ed. 2d 40 (1983).

The time sheets provided listing the time expended and costs incurred are found to be reasonable with some qualification. The indistinguishable entries in the time sheets for the respective defendants, including date and time entries, attorneys involved and description of work performed, suggest that efforts were undertaken on the three cases simultaneously rather than individually. Plaintiff has not established otherwise through the details provided in the time sheets. Such is its burden. In light of the joint and several liability contemplated by the April 27, 2001 order, an award that included all claimed time expenditures in the three cases would be duplicative, constituting a treble award of attorneys' fees for the actual time expended, and would not be appropriate. Therefore, in acknowledgment of the effort by which the pleadings as to each defendant interrelated to those against

other defendants, the higher of the three submissions will be used, specifically the claim applicable to defendant Ahuwalla, modified to accommodate the three cases.

After review, the following time is found to have been reasonably expended as a consequence of defendants' contempt: Attorney Kimberly Rinehart - 27.6 hours; Attorney Kevin Kennedy - 6.25 hours; Attorney Edward Dunham - 4.61 hours; Attorney Bethany Appleby - 0.1 hours; Paralegal Rachel Celano - 12.45 hours; and Paralegal Paula Sagarino - 3.65 hours.

An award at the various attorneys' billable rates is found not to be warranted. Fee applicants must "produce satisfactory evidence — in addition to the attorneys' own affidavits — that the requested rates are in line with those prevailing in the community for similar lawyers of reasonably comparable skill, experience, and reputation." *Blum v. Stenson*, 465 U.S. 886, 895-96 n.11, 104 S. Ct. 1541, 79 L. Ed. 2d 891 (1984). The award may be based in part on hourly rates charged in a community and is not limited to the submitted evidence. *Miele v. N.Y. State Teamsters Conf. Pension & Ret. Fund*, 831 F.2d 407, 409 (2d Cir. 1987). There is no substantiation of the hourly rates requested. Rates therefore will be assigned based on knowledge of rates charged by counsel in this District. *See Smart SMR of N.Y., Inc., v. Zoning Comm'n of Stratford*, 9 F. Supp. 2d 143, 150 (D. Conn.1998); *Evans v. Conn.*, 967 F. Supp. 673, 691-92 (D. Conn.1997). The following rates are found to be reasonable: Attorney Kimberly Rinehart - \$150/hour; Attorney Kevin Kennedy - \$225/hour; Attorney Edward Dunham - \$250/hour; Attorney Bethany Appleby - \$150/hour; Paralegal Rachel Celano - \$75/hour; and Paralegal Paula Sagarino - \$75/hour.

Multiplying the reasonable hours found by the reasonable rate, plaintiff is entitled to an award of \$7,921.25 in attorneys' fees. In addition to this award, plaintiff has documented \$158.29 in non-duplicative costs among the three cases. Plaintiff's total award is therefore \$8,079.54.

III. CONCLUSION

Plaintiff's motions to recover attorneys' fees (Doc. 31 in 3:00cv544; Doc. 31 in 3:00cv545; and Doc. 29 in 3:00cv546) is hereby **granted in part**. Defendants Kwan Chien Hu, Shamsher Khaira and Kulbir Ahuwalla and Attorney Lawrence Strauss are jointly and severally liable to plaintiff in the amount of \$8,079.54 in attorneys' fees and costs.

SO ORDERED.

Dated at New Haven, Connecticut, June ___, 2002.

Peter C. Dorsey
United States District Judge